

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

BEAR PROPERTY MANAGEMENT
Plaintiff Below,
Appellee

VS

SHATIFAH FINNEY
Defendant Below,
Appellant

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C.A. No. JP13-19-002041

TRIAL DE NOVO

Submitted: April 4, 2019

Decided: May 8, 2019

APPEARANCES:

Bear Property Management, Plaintiff, appeared by and through Form 50 agent, Marjorie Williams
Shatifah Finney, Defendant appeared pro se

Amanda D. Moyer, Justice of the Peace
Cheryl McCabe-Stroman, Justice of the Peace
Kerry M. Taylor, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-19-002041

BEAR PROPERTY MANAGEMENT VS SHATIFAH FINNEY

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

The Plaintiff, landlord Bear Property Management (BPM), represented by Marjorie Williams, pursuant to Supreme Court Rule 57, filed Civil Action No. JP13-19-002041, on February 7, 2019, in Justice of the Peace Court 13. BPM sought delinquent rent payments and possession from the Defendant, tenant Shatifah Finney (Finney).

The trial, before a single Justice of the Peace, on March 19, 2019, resulted in a Court order in favor of BPM and against Finney in the amount of \$3360.48, and possession was awarded to BPM. Finney filed an appeal for a trial de novo (TDN) on March 26, 2019. The appeal was approved on March 26th, with an order for Finney to pay a bond of \$3800 to stay the writ of possession. Bond was not paid to the Court.

A TDN was scheduled for April 4, 2019, before a three-judge panel, consisting of Justice of the Peace Cheryl McCabe-Stroman, Justice of the Peace Amanda Moyer, and Justice of the Peace Kerry Taylor. BPM appeared, represented by Marjorie Williams and Moses Nganga, pursuant to Supreme Court Rule 57. Finney appeared, self-represented.

Facts

BPM is seeking unpaid rent and late fees from January through April 4, 2019, a total of \$3934. BPM submits the Five (5) Day Notice sent to the Finney January 15, 2019, as well as the breakdown sheet to support their claim. Finney testifies that she does owe rent for January through present.

Finney asserted a verbal counterclaim in the trial below for the conditions of the unit. Finney testifies that she signed a lease with BPM and moved in to 32 Darien Court July 19, 2018. Finney states she was paying \$1200 and expected something nice. Finney asserts that she contacted the rental office as well as their employee, Moses Nganga, directly on multiple occasions to voice her concerns related to the living conditions in the unit. From the time Finney moved in there were noises coming from the

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walls, scratching and growling, that would get worse at night, in addition there were animal footprints and feces found in Finneys bedroom. Finney reported it to BPM and an exterminator responded to the unit, as a result of the exterminator visit a skunk was trapped and removed from Finneys property. Finney indicates that the noises persisted after the exterminator visit and a second, and then later a third, exterminator was contacted to try and fix the issue. Photos of the attic of the property are presented showing torn insulation and animal droppings; on March 31, 2019 a raccoon was caught in Finneys attic. Finney asserts that there was a problem with the roof leaking through the ceiling into the bathroom light fixture, the bathroom light could not be used because it was a fire hazard. Finney acknowledges that some repairs have been made but raises the issue of not always getting notice as required by the Landlord/Tenant code prior to BPM coming to the residence. Finney states she had to stay elsewhere due to the conditions of the unit on multiple occasions and provides bank statements reflecting \$438.64 paid for alternate housing. New Castle County Code Enforcement (NCCo Code) Officer Shane Miller (Miller) is present to testify. Miller states he responded to the residence March 21, 2019 and issued 14 violations for the property; some of the cited violations are: rodent and feces in attic, electrical system malfunction, water damage to walls and ceiling, and stove not functioning properly. A copy of Miller's violation notice as well as pictures of the violations he took is submitted as evidence. Renee Johnson (Johnson) is present to testify. Johnson indicates that on five to six separate occasions she allowed Finney and her children to stay at her home due to the conditions at Finneys home.

BPM submits a receipt from Vermin, LLC dated August 23, 2018. BPM provides work orders from the following dates: August 14, 2018; October 25, 2018; November 2, 2018; November 4, 2018; January 3, 2019; January 8, 2019; February 2, 2019; and March 25, 2019. Moses Nganga (Nganga) testifies that in addition to contacting an exterminator he responded to the unit and sealed as many holes as possible to prevent animals from getting back into the house, this is corroborated by the October 25, 2018 work order which shows the work was completed October 29, 2018. Nganga indicates that in responding to the maintenance issues it was determined that the roof needs to be replaced, but the owner of the property wanted 3-5 estimates before moving forward with the project. An estimate from R. Short Roofing dated February 27, 2019 is presented as evidence by BPM. On cross examination, Nganga indicates they first became aware the roof needed to be replaced a month or so ago. In response to the NCCo Code violations, Nganga indicates that as soon as they became aware of the problems efforts to correct the violations began. Nganga asserts they responded to the residence March 27, 2019 to begin repairs but were denied access to the residence by Finney but does provide pictures of some of the work performed outside the residence.

Discussion

Landlord-Tenant relationships are governed by Delaware's Landlord-Tenant Code, found in Title 25, Chapters 51 through 70. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 Del. C. §5702(2): *The tenant has wrongfully failed to pay the agreed rent.*

Therefore, the landlord may proceed under 25 Del. C. §5502(a):

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand

payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

Payment of rent is a material term of the contract between BPM and Finney. BPM submitted to the Court a Five Day letter and the Certificate of Mailing, as evidence that a demand for rent payment was made to Finney, via United States Postal Service. Finney testified that rent has not been paid for January through present.

In BPM's Five Day letter the amount owed for January is indicated to be \$650.00. Both parties provided testimony that the monthly rent was \$1200. There is a discrepancy in the amount of rent demanded for January, as such only \$650 shall be awarded for January rent and \$1200 for each month thereafter. BPM is also requesting late fees be awarded, however, as no lease was provided as evidence allowing for the assessment of late fees, no late fees shall be awarded.

As to the case in chief, the Court finds that BPM has satisfied their burden of proof by a preponderance of the evidence that Finney owes \$3204.80 in past due rent.

Finney seeks a rent abatement pursuant to 25 Del. C. §5308(a): *Essential services; landlord obligation and tenant remedies.*

If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure

Finney alleges that the conditions of the unit, raccoon infestation, roof leaking, electrical problems, materially deprived her of a substantial part of the benefit of the bargain.

Finney began the tenancy July 19, 2018, work orders dated August 14, 2018 through March 25, 2019 indicate that the problems with vermin and the roof leaking persisted throughout the tenancy. Receipt for an exterminator, as well as comments on the October 25, 2019, November 2, 2019, January 3, 2019, and February 2, 2019 work orders support Finney's assertion that the problems continued, a raccoon was finally captured March 31, 2019. On the work order dated October 25, 2018, BPM indicates that the drop ceiling and insulation needed to be removed due to mold. A February 2, 2019 work order states BPM is to get quotes for roof replacement and that the ceiling will need to be repaired and painted after the roof is replaced, a note on February 8, 2019 indicates the owner is requesting three estimates for the roof replacement. BPM presented one estimate for roof replacement February 27, 2019 from R. Short Roofing; at the time of trial the roof had yet to be replaced. The unit was cited by NCCo Code Officer Miller March 21, 2019 for fourteen code violations including: Rodent Harborage, holes in soffit and under dwelling providing access for pests; Roofs and Drainage, damage to soffit, roof in disrepair causing leakage inside dwelling; Electrical Systems Hazards, malfunctioning light switch.

Although some effort was made by BPM to address the issues within the unit, it is clear that the problems with the conditions of the unit persisted throughout the tenancy and impacted Finney's enjoyment of the unit.

As to the counterclaim, the Court finds that Finney has satisfied her burden of proof by a preponderance of the evidence and awards a partial rent abatement of \$2981.92¹.

Conclusion

For the foregoing reasons, the Court enters a net judgment for Bear Property Management against Shatifah Finney, awarding a money judgment of \$222.88, possession plus \$23.22 per diem, \$50.00 court costs, and 8% post judgment interest per annum.

IT IS SO ORDERED 08th day of May, 2019

/s/ Amanda Moyer (SEAL)
Justice of the Peace
On behalf of the 3-Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

¹ \$2981.92 consists of 40% abatement for the months of September, October, November, December, January, February & March based on \$1200 monthly rent for all months except December and January which were calculated based on \$650 monthly rent, and 4 days per diem at \$38.70 less 40%.

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